

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JAMES OHRMANN**  
Claimant

VS.

**GOODYEAR TIRE & RUBBER CO.**  
Respondent

AND

**LIBERTY MUTUAL INSURANCE. CO.**  
Insurance Carrier

Docket No. 1,030,763

**ORDER**

Respondent and its insurance carrier (respondent) requests review of the November 15, 2006 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

The Administrative Law Judge (ALJ) granted claimant's request for workers compensation benefits thereby implicitly concluding that claimant sustained an accidental injury arising out of and in the course of his employment with respondent. Specifically, the ALJ indicated that he was persuaded by the testimony of Mr. Botter, claimant's training supervisor on the date of his accident. Mr. Botter's testimony was consistent with the claimant's with respect to the facts and circumstances surrounding the accident.

The respondent requests review of this decision alleging, in essence, that claimant's accident "could not have occurred in the way in which claimant describes."<sup>1</sup> Thus, respondent maintains claimant has failed to meet his evidentiary burden and his claim should have been denied.

---

<sup>1</sup> Respondent's Brief at 2 (filed Dec. 6, 2006).

Claimant contends the ALJ's preliminary hearing Order should be affirmed in all respects.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member finds the ALJ's preliminary hearing Order should be affirmed.

Claimant, a long-time employee for respondent, was working with Thomas Botter, training for the position of a green (new) tire sprayer. This job involves spinning a tire on a tire table and spraying the inside of the tire as it spins. On August 2, 2006, the second day of his training, claimant kicked the tire table with his left leg and then stepped down on that same leg, turning his back to the table for a moment. In doing so, he came too close to the tire table and part of the table struck him in the left calf area just below the knee.

This event was witnessed by Mr. Botter, who testified that "[i]t clipped him pretty good and he stumbled to stay up."<sup>2</sup> He also indicated that both he and others had been struck by this machine in much the same way. According to Mr. Botter, claimant continued working that day but with a limp. And continued to limp the next. After Mr. Botter returned from vacation on August 15, 2006 and claimant was still limping, he suggested claimant file an accident report.

Respondent provided the testimony of Cindy Nace, a workers compensation manager, who explained how the tire table was configured and that had claimant stepped in towards the table as he says, it would be his ankle that would be injured rather than his calf. Although, Ms. Nace later conceded that it is mechanically possible that claimant would be injured in the manner in which he describes.

As both parties have noted, the Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>3</sup> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>4</sup>

Here, the ALJ concluded the claimant had met his burden, even going so far as commenting on the fact that he was persuaded by Mr. Botter's testimony. And after considering the entire record, this Board Member finds the ALJ's findings to be justified.

---

<sup>2</sup> Botter Depo. at 39.

<sup>3</sup> K.S.A. 2005 Supp. 44-501(a).

<sup>4</sup> K.S.A. 2005 Supp. 44-508(g).

Although respondent's human resources manager might have gathered that the claimant's accident could not have occurred as he says based upon her investigation and recreation, the simple fact is the accident was witnessed by Mr. Botter. His testimony is consistent with that of claimant's. And like the ALJ, this Board Member is persuaded by Mr. Botter's testimony as well as claimant.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.<sup>5</sup> Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to the entire Board in appeals of final orders.

**WHEREFORE**, it is the finding, decision and order of this undersigned Board Member that the Order of Administrative Law Judge Bryce D. Benedict dated November 15, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January, 2007.

\_\_\_\_\_  
BOARD MEMBER

c: Mitchell D. Wulfekoetter, Attorney for Claimant  
John A. Bausch, Attorney for Respondent and its Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge

---

<sup>5</sup> K.S.A. 44-534a.